

REMARKS / ARGUMENTS

The present application includes pending claims 1-31, all of which have been rejected. Independent claims 1, 11, and 21 have been amended. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1, 11, and 21 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. Claims 1-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,970,919 ("Doi"). The Applicant respectfully traverses these rejections at least based on the following remarks.

I. Rejection under 35 U.S.C. § 112

Claims 1, 11, and 21 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. The Office Action states the following:

Regarding claims 1, 11, and 21, the newly added limitation "wherein each network connection on the first communication path has a corresponding network connection on the second communication path" is not disclosed by the original specification.

See the Final Office Action at page 2. The Applicant respectfully disagrees. The Examiner is referred to, for example, FIG. 2 of the present specification and corresponding description in ¶¶ 41-54. As clearly explained in the above-

referenced paragraphs, the physical network connections are illustrated in FIG. 2 with solid lines, and the logical level communication pathways are illustrated as “corresponding dashed lines having double-ended arrows.” See the present specification at ¶ 41. As seen in Applicant’s FIG. 2, each network connection on the first communication path (in solid line) between any two end points has a corresponding redundant (or a duplicate) network connection on the second communication path (in dashed line).

Furthermore, the Examiner is specifically referred to the last sentence in paragraph 41, where the phrase “connections between the various elements of the media exchange network 100” is used. When a connection between two end points is established via the network infrastructure 107, such “connection” would have a corresponding network connection on the second communication path. Obviously, the phrase “connections between the various elements” would cover all connections between any two end points.

The Applicant respectfully traverses the rejection of claims 1, 11, and 21 under 35 U.S.C. 112, first paragraph, at least for the above reasons, and submits that claims 1, 11, and 21 are allowable.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

II. Doi Does Not Anticipate Claims 1-31

The Applicant first turns to the rejection of claims 1-31 under 35 U.S.C. 102(e) as being anticipated by Doi. With regard to the anticipation rejections under 102, MPEP 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See *id.* (internal citation omitted). Without conceding that Doi qualifies as prior art under 35 U.S.C. § 102(e), the Applicant traverses the rejection as follows.

A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Doi does not disclose or suggest at least the limitation of “establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network, wherein each network connection on said first communication path between said at least two end points, has a corresponding redundant network

connection on said second communication path,” as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

Regarding claim 1, Doi et al. teaches a method and system for network management (see column 2 line 21-31) comprising: establishing a second communication path (see col.15 line 37 - 65 edge 1 and edge 7 via nodes F, I, G, and J and figure 26) that is independent of a first communication path (see col.14 line 45 - col. 15 line 36 edge 1 and edge 7 via node A, node D and node G and node J and figure 25; this is an example/scenario disclosed by Doi, which the system has the capability of canceling of a route selection and it is inherent that just like in figures 25 and 26: first path (edge1-A-D-G-J-edge7), second path (edge1-A-F-I-G-J-edge7) the system is capable of canceling route as in figure 26 where node O is canceled and rerouted the traffic through nodes F, I, and G. It is inherent for the system to reroute the path in a larger scale such that first and second path would be independent to each other based on the canceling capability) that couples at least two end points via at least a first broadband network (see figure 25 and 26), wherein each network connection on the first communication path has a corresponding network connection on the second communication path (see figures 25 and 26 and col. 15 lines 37-46 which a scenario is provide where each node on the first path is connected to multiple node that allows the implementation of route cancellation and to reroute traffic through second path)

See the Final Office Action at pages 1-2. Referring to Figures 25 and 26 of Doi, the Examiner is referring to a “second communication path” between edges 1 and 7 (equated to Applicant’s “end points”). More specifically, the Examiner is equating the “second communication path” to include the path [edge 1 – A – F – I – G – J – edge 7]. Furthermore, the Examiner is equating the “first communication path” to include the path [edge 1 – A – D – G – J – edge 7]. As clearly seen from

FIGS. 25-26 of Doi, there is only a single communication path originating from the end points, edge 1 and edge 7. Doi does not disclose or suggest a second, independent communication path originating from the end points, edge 1 and edge 7, where a corresponding redundant (or a duplicate) network connection may be established via the second communication path.

Even though, as stated above by the Examiner, Doi discloses the capability of canceling a route or adding new nodes to the route, this still does not overcome the deficiencies of Doi. More specifically, Doi only discloses single links that couple successive nodes, as well as single links that couple the edges to their corresponding neighboring nodes. In instances where Doi adds a new node (e.g., node G is added in FIG. 26), then a different type of link (a virtual link) is established between nodes F and G. However, as Doi specifically states in col. 15, lines 56-59, when a virtual link is established, there is no corresponding physical link. In other words, even if Doi discloses the capability of canceling a route or adding new nodes to the route, the fact remains that each communication path between edges 1 and 7 is made of single links (either physical or virtual), and there is no independent (second) communication path where a corresponding redundant (or a duplicate) path is established between edges 1 and 7.

Referring to Figures 25 and 26 of Doi, the Examiner is referring to a "second communication path" between edges 1 and 7. More specifically, the Examiner is equating the "second communication path" to include the path [edge 1

– A – F – I – G – J – edge 7]. Furthermore, the Examiner is equating the “first communication path” to include the path [edge 1 – A – D – G – J – edge 7]. Initially, the Applicant points out that **the path [edge 1 – A – F – I – G – J – edge 7] is not “independent of” the path [edge 1 – A – D – G – J – edge 7] since both paths include three common links (edge 1 – A, G – J, and J – edge 7) and each of these three common links can be used in either the first or the second communication path.** In other words, at any given time, each of the three common links can be used in only one communication path, and cannot be used independently in both communication paths.

Furthermore, the Applicant points out that **each network connection on the first communication path [edge 1 – A – D – G – J – edge 7] does not have a corresponding network connection on the second communication path [edge 1 – A – F – I – G – J – edge 7].** The Examiner is using the virtual path between nodes F and G (Figure 26 of Doi, dotted line) as part of the second communication path. As clearly stated in Doi, **there is no physical link between nodes F and G.** See Doi, col. 15, lines 56-59. **Therefore, each network connection on the first communication path does not have a corresponding network connection on the second communication path.**

Therefore, the Applicant maintains that Doi does not disclose or suggest at least the limitation of “establishing a second communication path that is independent of a first communication path that couples at least two end points via

at least a first broadband network, wherein each network connection on said first communication path between said at least two end points, has a corresponding redundant network connection on said second communication path," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Doi does not disclose or suggest at least the limitation of "said first and second communication paths are of different types," as recited by the Applicant in independent claim 1. As explained above, Doi discloses that the edges and nodes in FIGS. 25-26 are coupled via physical links. The only time a different type of link, i.e., a virtual link, is established is when a new node is introduced. In such instance, even though a virtual link may be established between two nodes (e.g., between nodes F and G), there is no corresponding physical link between the two nodes. Therefore, for any given edge or node, Doi does not disclose the existence of at least two communication paths that are of different types. The Applicant maintains that Doi does not disclose or suggest at least the limitation of "said first and second communication paths are of different types," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Doi and is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that

independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-10, 12-20 and 22-31

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated by Doi has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20 and 22-31 depend from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-31.

III. Inherency

Based on the above citation from page 2 of the Final Office Action, it appears that claims 1-31 are also being rejected based on inherency.

The Applicant submits that a rejection based on inherency must include a statement of the rationale or evidence tending to show inherency. See Manual of Patent Examining Procedure at § 2112. "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish

the inherency of that result or characteristic.” *See id. citing In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. **Inherency, however, may not be established by probabilities or possibilities.** The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

The Applicant respectfully submits that neither Doi itself nor the Final Office Action “make[s] clear that the missing descriptive matter,” said to be inherent “is necessarily present in” Doi.

A rejection based on inherency must be based on factual or technical reasoning:

In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.

Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

The Applicant respectfully submits that the Final Office Action does not contain a basis in fact and/or technical reasoning to support the rejection based on inherency. Instead, as recited above, at least claim 9 of the present application

stands rejected based on a conclusory statement of inherency, rather than upon a "basis in fact and/or technical reasoning." Accordingly, the Applicant respectfully submits that, absent a "basis in fact and/or technical reasoning" for the rejection of record, that rejection should be reconsidered and withdrawn.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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